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EXAMINER

QUAN, ELIZABETH S

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/751,780	Applicant(s) MOORE ET AL.	
	Examiner Elizabeth Quan	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 10-12, 15-23 is/are rejected.
- 7) ☒ Claim(s) 4-7, 9, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1743

5. Claims 1, 2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,092,996 to Spielberg.

Spielberg discloses a centrifuge labware device comprising a container (39) and a removable non-threaded lid (17) (see FIG. 2). The container (39) has a bottom wall and one or more substantially vertical sidewalls (see FIG. 2). The bottom wall and the one or more sidewalls cooperate to define an interior chamber with an interior chamber cross-sectional area (see FIG. 2). The container (39) has a top opening with a first transverse axis and a second transverse axis substantially perpendicular to the first transverse axis (see FIG. 2). The top opening defines open area, which is at least about 90% of the interior chamber cross-sectional area (see FIGS. 2 and 5). The first and second transverse axes as characterized by the inner diameter of the container (39) is typically about 3.75 inches or 9.525 cm (see COL. 4, lines 66-68; COL. 5, lines 1-5). The removable non-threaded lid (17) has an exterior and interior surface (see FIG. 2). The lid (17) is sized and dimensioned to cover the top opening so as to seal the interior chamber (see FIGS. 2, 5, and 6; COL. 3, lines 3-22 and 68; COL. 4, lines 1, 2, and 26-34).

The immediate specification defines "very high axial strength" as the capability of withstanding axial forces of at least about 1000 x g, preferably at least about 4000 x g, and most preferably 5000 x g (see PAGE 7, lines 14-18). Therefore, the lid (17) has a very high axial strength since it can withstand forces up to 5000 x gravity for whole blood separation/fractionation (see COL. 6, lines 7-12). Since the lid (17) is designed for placement within the top of the container (39) and withstanding up to 5000 x gravity for whole blood separation/fractionation, it appears that the container (39) must also be able to withstand up to

Art Unit: 1743

5000 x gravity since the container (39) supporting the lid (17) also participates in centrifugation, being subjected to centrifugal forces. Furthermore, centrifugal forces affect both the exterior and interior of the container and lid. If the exterior of the lid or container can withstand 5000 x gravity, then the interior of the lid or container can withstand 5000 x gravity, and vice versa. If the container and lid has a very high strength along its longitudinal axis such that it can withstand 5000 x gravity, then the container and lid can withstand 5000 x gravity from the inside or outside of the container. In the event one would argue that Spielberg does not explicitly disclose that the container (39) can withstand up to 5000 x gravity, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Spielberg such that it can withstand up to 5000 x gravity to conform with the lid since they both participate in centrifugation and as a manufacturing expedient to make the lid and container out of the same material and since it is well known that most centrifugation processes requires forces of at least 5000 x gravity.

6. Claims 8, 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,092,996 to Spielberg.

Spielberg shows that the interior surface of the lid has a circumferential horizontal lid flange, circumferential vertical lid flange disposed interior to the circumferential horizontal lid flange, and vertical lid flange is spaced apart from the circumferential rim of the container (see FIG. 2). Spielberg does not disclose the circumferential horizontal lid flange with a width of at least 3 mm, vertical lid flange disposed downwardly below the horizontal lid flange by at least 3 mm, and the vertical lid flange spaced apart from the circumferential rim of the container by at least about 1 mm. However, it would have been obvious to one having ordinary skill in the art at

Art Unit: 1743

the time the invention was made to modify the apparatus of Spielberg to provide the circumferential horizontal lid flange with a width of at least 3 mm, vertical lid flange disposed downwardly below the horizontal lid flange by at least 3 mm, and the vertical lid flange spaced apart from the circumferential rim of the container by at least about 1 mm since the Federal Circuit held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device (*Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert denied*, 469 U.S. 830, 225 USPQ 232 (1984)). Furthermore, it has also been held that discovering the optimum or workable range involves only routine skill in the art (*In re Aller*, 105 USPQ 233).

7. Claims 1-3, 8, 10-12, 15, 16, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,855,289 to Moore in view of U.S. Patent No. 3,419,198 to Pettersen and U.S. Patent No. 2,849,144 to Southwell and Sargent-Welch Bottle Carrier S-9625 and U.S. Patent No. 4,874,103 to Quisenberry et al. and U.S. Patent No. 6,062,001 to Kunik.

Moore discloses a centrifuge labware device (10) comprising a container (20) and a removable lid (34) (see FIG. 1). The container (20) has a bottom wall and one or more substantially vertical sidewalls (see FIG. 1). The bottom wall and the one or more sidewalls cooperate to define an interior chamber with an interior chamber cross-sectional area (see FIG. 1). The container (20) has a top opening with a first transverse axis and a second transverse axis substantially perpendicular to the first transverse axis (see FIG. 1). The top opening (30) defines an open area, which is at least about 90% of the interior chamber cross-sectional area (see FIG. 1).

Art Unit: 1743

The removable lid (34) has an exterior and interior surface (see FIG. 1). The lid (34) is sized and dimensioned to cover the top opening (30) so as to seal the interior chamber (see FIG. 1). The lid (34) includes a curved handle (112) in the form of a hinged clip (see FIGS. 1 and 11; COL. 7, lines 41-64). The handle (112) forms a hinge or a flexible joint with the lid and clips, clasps, hooks, or grips the ribbed portion of the lid (see FIGS. 1 and 11; COL. 7, lines 41-64). The handle (112) is recessed within grooves (120) disposed in the exterior surface of the lid (34) (see FIGS. 1 and 11; COL. 7, lines 41-64). The top opening of the container (20) is defined by a circumferential rim, which matches the circumferential horizontal lid flange (see FIGS. 1, 4, 7, and 8). At least one gasket (54,98) is disposed between the circumferential rim and the circumferential horizontal lid flange (see FIG. 1; COL. 5, lines 6-8; COL. 6, lines 7-11, 20, and 21). A liner (22) is disposed within the container (20), closely fit against the walls of the container (20) (see FIG. 1). The top opening of the container (20) is defined by a circumferential rim, which matches the circumferential horizontal lid flange (see FIG. 7). The liner has one or more vertical sidewalls, which terminate in an outwardly directed circumferential horizontal line flange (see FIG. 7). The circumferential horizontal liner flange is disposed between the circumferential rim of the container and the circumferential horizontal lid flange as the circumferential liner flange is contained within the circumferential rim of the container and the circumferential horizontal lid flange (see FIG. 7). The interior surface of the bottom wall of the container (20) is bowl-shaped such that the transition of the bottom wall to the one or more sidewalls is smooth and defines no corners or edges (see FIG. 7). The centrifuge labware device (10) is disposed within a centrifuge (12) (see FIG. 2).

Moore discloses that the lid (34) of the container (20) maintains a fluid-tight seal during high-speed centrifugation, increasing the sealing force proportional to a centrifugal load to which the container is subjected (see COL. 2, lines 63-67). Since the lid withstands high-speed centrifugation, it would be of very high axial strength. Since the container participates in high-speed centrifugation with the lid, the container would be of very high axial strength as well. In the event one would argue that Moore does not explicitly disclose that the container and lid are of very high axial strength, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container and lid to be of very high axial strength as required in performing separation of certain materials.

Moore does not explicitly disclose that the container and lid has sufficient strength to withstand 5000 x gravity applied to the interior side of the container and exterior side of the lid, respectively. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container and lid of Moore such that it can withstand up to 5000 x gravity applied to the interior side of the container and exterior side of the lid, respectively, since it is well known that most centrifugation processes requires forces of at least 5000 x gravity.

Moore does not disclose the diameter of the opening of the container. However, it is very well known that centrifuge containers come in a variety of sizes depending on the volume of biological matter being separated. For example, centrifuge buckets for blood bags and centrifuge tubes for blood collected from a syringe. Furthermore, it has been held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform

Art Unit: 1743

differently than the prior art device, the claimed device was not patentably distinct from the prior art device (*Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984)). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the diameter of the container opening as necessary to hold different amounts of biological or chemical materials.

Moore discloses that the lid (34) is threaded. However, it is very well to have lids attached to the containers by means other than screwing a threaded lid to the container, such as snap-fit between a lid with a single groove and a container with a single rib, snap-fit between a lid with an inwardly projecting bead and container with an exterior bead, clamping the lid to the container, etc. Pettersen discloses a lid with an inwardly projecting bead (19) and a container with or without an exterior bead (see FIGS. 6-9; COL. 2, lines 70-72; COL. 3, lines 1-3). The lid offers secure attachment to the container with easy access into the contents of the container. Southwell discloses that lid (14) has a groove (24), which receives bead (22) of the container to lock the lid (14) to the container (see FIGS. 2, 4, and 5; COL. 2, lines 51-56). This type of fastening means permits the lid to be easily positioned on or snapped off the container (see FIGS. 2, 4, and 5; COL. 2, lines 51-56). Sargent-Welch's Bottle Carrier S-9625 discloses that a snap cover secures the contents within the carrier (see enclosed catalogue sheets). Quisenberry et al. discloses a snap-fit lid (14) that securely engages the container to prevent accidental exposure to infectious waste (see FIG. 2). Kunik discloses a non-threaded lid for securely engaging with the container for safe disposal of sharps (see FIG. 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Moore to provide a non-threaded lid as in Petteron and/or Southwell and/or Sargent-Welch's

Art Unit: 1743

Bottle Carrier S-9625 and/or Quisenberry et al. and/or Kunik as an alternative recognized equivalent of fastening means that secures the lid to the container while permitting the lid to be easily positioned on or snapped off the container.

Referring to claims 8, 10, 11, Moore shows that the interior surface of the lid has a circumferential horizontal lid flange, circumferential vertical lid flange disposed interior to the circumferential horizontal lid flange, and vertical lid flange is spaced apart from the circumferential rim of the container (see FIG. 1, 4, 7, and 8). Moore does not disclose the circumferential horizontal lid flange with a width of at least 3 mm, vertical lid flange disposed downwardly below the horizontal lid flange by at least 3 mm, and the vertical lid flange spaced apart from the circumferential rim of the container by at least about 1 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Moore to provide the circumferential horizontal lid flange with a width of at least 3 mm, vertical lid flange disposed downwardly below the horizontal lid flange by at least 3 mm, and the vertical lid flange spaced apart from the circumferential rim of the container by at least about 1 mm since the Federal Circuit held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device (*Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert denied*, 469 U.S. 830, 225 USPQ 232 (1984)). Furthermore, it has also been held that discovering the optimum or workable range involves only routine skill in the art (*In re Aller*, 105 USPQ 233).

Referring to claim 22, Moore does not address whether the one or more sidewalls of the containers are translucent or transparent. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Moore to provide translucent or transparent sidewalls to allow viewing of the contents within the container.

8. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,092,996 to Spielberg in view of U.S. Patent No. 4,119,407 to Goldstein et al.

Spielberg do not disclose a planar support member disposed within a pair of opposed first structural support slots. They also do not disclose a pair of second structural support slots spaced apart from the first structural support slots. However, Goldstein et al. disclose three pairs of opposed structural support slots and a planar support member disposed within each pair of slots to create a multi-compartmented container for holding different or several materials in an organized manner (see FIG. 2; COL. 2, lines 34-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Spielberg to provide a planar support member disposed within a pair of opposed first structural support slots and at least two pairs of opposed structural support slots as in Goldstein et al. to provide a multi-compartmented container to contain different or several materials separately as necessary or desired.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,855,289 to Moore in view of U.S. Patent No. 3,419,198 to Pettersen and U.S. Patent No. 2,849,144 to Southwell and Sargent-Welch Bottle Carrier S-9625 and U.S. Patent No. 4,874,103

Art Unit: 1743

to Quisenberry et al. and U.S. Patent No. 6,062,001 to Kunik as applied to claim 1 above, and further in view of U.S. Patent No. 2,191,447 to Beardsley.

Referring to claim 21, Moore in view of Petterson and Southwell and Sargent-Welch Bottle Carrier S-9625 and Quisenberry et al. and Kunik do not disclose an air vent filter in the lid. However, it is very well known to have air vent filters in the lid as disclosed in Beardsley. Particularly, Beardsley disclose an air vent filter (17) in lid (10) to keep the contents of the container free from contamination (see FIGS. 2 and 3). The filter is attached to the lid to prevent the filter from losing its effectiveness from becoming wet by contact with liquid and maintain and an airtight seal with the container (see PAGE 1; COL. 1, lines 5-39). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Moore in view of Petterson and Southwell and Sargent-Welch Bottle Carrier S-9625 and Quisenberry et al. and Kunik to provide an air vent filter in the lid as disclosed in Beardsley to keep the contents of the container free from contamination, prevent the filter from losing its effectiveness from becoming wet by contact with liquid, and maintain and an airtight seal with the container.

Allowable Subject Matter

10. Claim 24 is allowed.
11. Claims 4-7, 9, 13, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments filed 12/23/2003 have been fully considered but they are not persuasive.

13. Applicant explains that claim 1 is directed to a centrifuge labware device having a container and a removable non-threaded lid. Applicant further explains that same mixtures are placed in labware containers, which are placed in centrifuge buckets as explained on page 1, line 10 to page 2, line 13, such that the container claimed in claim 1 fits inside of a centrifuge bucket. Applicant argues that Spielberg does not teach a container that fits inside of a cylindrical centrifuge bucket, such that Spielberg does not teach or suggest the container of claim 1. Applicant further explains that since Spielberg discloses filter (17) attached to a peripheral support means (27) that sits on the top of the centrifuge bucket and the filter, peripheral support means, and blood bags are removed from the centrifuge bucket one centrifugation is complete, such there is no need to place the blood bags in a separate container. Applicant concludes that one skilled in the art would have no motivation to add an additional container to the system taught by Spielberg let alone a container as taught by the present invention. Examiner maintains the current claims recite a centrifuge labware device comprising (a) container and (b) removable non-threaded lid and structural limitations directed toward the container and removable non-threaded lid. Spielberg discloses a centrifuge labware device comprising a container (39) and removable non-threaded lid (17) along with the appropriate structural limitations directed toward the container and removable non-threaded lid. The current claims never mention that the container fits into another container, such as a cylindrical centrifuge bucket. The claim recites only a single container, and thus there is no need to modify Spielberg to provide an additional

Art Unit: 1743

container to the system. The arguments are drawn to the intended use of the container to be placed in a centrifuge bucket based on the instant specification. Examiner also notes that Spielberg's container (39) is capable of being placed into another container, such as that of a rotor with multiple compartments for simultaneously processing a plurality of containers (39) with blood bags.

14. Applicant explains that claim 1 requires that the top opening area of the container be "at least about 90% of the interior chamber cross-sectional area", which is made possible by the fact that the lid is non-threaded, such that the threads do not take away from the diameter of the top opening area. Applicant further explains that Moore is directed to a capping and sealing assembly for a sample holding centrifuge container in which a lid (34) fits over a stopper (84) and gasket (98) and onto container (22). Applicant argues that the container tapers to an upper threaded neck portion, which is provided with increased wall thickness for increased strength, such that the top opening area of the container is less than about 90% of the interior chamber cross-sectional area. Applicant states that one skilled in the art would not be motivated to modify the container taught by Moore to have a top opening area of at least about 90% of the interior chamber cross-sectional area since the threaded connection necessary for attachment of the lid makes widening of the neck top opening difficult. Applicant further states that Moore teaches away from such a construction by teaching a tapered neck portion with increased wall thickness and the secondary references fail to remedy the defect. Applicant concludes that one would not be motivated to modify the threaded lid opening to a non-threaded design since the lid is tightened onto the neck of container (22) to hold stopper (84) and gasket (98), such that there is no motivation to alter the threaded design by the secondary references, all of which are

Art Unit: 1743

unrelated to centrifuge labware and the unique stresses encountered by such labware. Examiner notes that when she refers to the container she is referring to container (20). The arguments appear to be centered on the container (22). Examiner emphasizes the container is container (20), and the structure represented by (22), which is referred to as the container by the Applicant, is the liner in the office action. Container (22) does not have threads or tapered neck portion with increased wall thickness. Claim 1 recites that the container has a "top opening defining a top opening open area which is at least about 90% of the interior chamber cross-sectional area", such that we are comparing the cross-sectional area of the opening with the cross-sectional area of the interior space within the container (20). Clearly, the top opening area is at least about 90% of the interior chamber cross-sectional area. It may be considered 100% or more since the opening appears at least as large if not larger than the cross-sectional area of the interior chamber or space within container (20) (see fig. 7 of Moore). Even if one were to consider the thickness of the sidewalls of the container as part of the interior chamber, which is not required by the claim, the opening is at least about 90% of the interior chamber cross-sectional area. The shoulder (32) at the top of the container is not even part of the interior of the container as the annular shoulder protrudes from the sidewalls of the container. Even so, if one were to consider the shoulder and sidewalls as part of the interior chamber or space within the container, which is not required by the claim, the opening is at least about 90% of the interior chamber cross-sectional area. But clearly the interior chamber is the unoccupied space within the sidewalls of the container, such that the top opening is at least 100% of the interior chamber cross sectional area in Moore. It is emphasized that when the device of fig. 1 is assembled, such that the liner (22) is placed into container (20) and the lid (34) along with gaskets and stopper is placed onto

Art Unit: 1743

the container (20) holding lid (34), the lid (34) covers the top opening and seals the interior chamber. One would have been motivated to modify the lid to a non-threaded design to fit onto container (20) or over liner (22) since the secondary references show that it is very well known to use non-threaded lids as opposed to threaded lids as alternative means of fastening a lid onto a container. It does not matter whether they are directed to the art of centrifuging since it is a recitation of intended use and most containers whether they are used for centrifuging or not are capable of being used for centrifuging purposes. Southwell shows that the container may be threaded, the lid non-threaded, and secure connection between the two is still obtained if the concern is achieving a closure between the liner (22) and lid (34). In the case, the lid is still able to hold in the gasket and stopper. In Southwell the entire lid, outside and inside, is non-threaded, such that it may be placed onto the liner (22) with threads and the liner is placed into container (20) in which the lid engages the interior of the container (20). The container (20) is covered by the same lid (34) by an exterior non-threaded connection of the lid (34) with the container (20). The secondary references reinforce the idea that the lid may be non-threaded as alternative fastening means to threaded means.

15. Applicant explains that claim 21 requires that the labware device further comprises an air vent filter disposed with the lid and refers to page 10, lines 9 and 10 of the specification, which states that the air vent filter facilitates the filling and decanting of liquid material to and from the container through a pouring spout. Examiner notes that the claim does not recite an air filter facilitating the filling and decanting of liquid material to and from the container through a pour spout. The argument appears to be based on the intended use of the air vent filter provided by the specification but not stated in the claim. Even if such functional recitation were included, it

Art Unit: 1743

would be considered intended use and does not structurally limit the device claim, such that if the air filter is capable of performing the function, it meets the limitation. Beardsley provides outstanding motivation of keeping the contents of the container free from container and the configuration of placing the filter in the lid is to prevent the filter from losing its effectiveness from becoming wet by contact with liquid and maintain an airtight seal with the container.

16. Applicant's arguments, see pages 13 and 14, filed 12/23/2003, with respect to claims 4-7, 9, and 24 have been fully considered and are persuasive. The Moore rejection of claims 4-7 and 24 has been withdrawn.

17. The rejection(s) of claim(s) 17-19 under Moore have been fully considered. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made with Spielberg in view of Goldstein.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Quan whose telephone number is (571) 272-1261. The examiner can normally be reached on M-F (8:00-4:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elizabeth Quan
Examiner
Art Unit 1743

eq


Jill Warden
Supervisory Patent Examiner
Technology Center 1700